

POLLUTION CONTROL FACILITY SITING ORDINANCE

Health Department

ORDINANCE NO.
PREVIOUSLY ADOPTED
ORDINANCE NOs.
0-9412-1200-88
0-9304-1200-20

POLLUTION CONTROL
FACILITY SITING ORDINANCE

WHEREAS, the Illinois Environmental Protection Act (415 ILCS 5/1 *et seq.*) allows the county board of a county to approve or disapprove requests for local siting approval for each new pollution control facility, or an expansion of an existing facility, which is subject to such review; and

WHEREAS, pursuant to the Illinois Environmental Protection Act (415 ILCS 5/1 *et seq.*), local zoning or other local land use requirements shall not be applicable to pollution control facilities that are subject to siting approval from the county board of a county; and

WHEREAS, counties are empowered by Statute, 415 ILCS 5/39.2, to charge applicants a reasonable fee to cover the reasonable costs incurred by the county in the siting review process.

NOW, THEREFORE, BE IT ORDAINED, that the following is intended to delineate the substance and procedure for the application and hearing of such proposed sites, and shall be called "The Pollution Control Facility Siting Ordinance".

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**MCHENRY COUNTY, ILLINOIS
POLLUTION CONTROL FACILITY SITING ORDINANCE**

ARTICLE ONE – INTENT AND PURPOSE

101 COUNTY APPROVAL OF POLLUTION CONTROL FACILITIES

- 101.1 No site approval for the development or construction of a new Pollution Control Facility or expansion of an existing Pollution Control Facility in unincorporated McHenry County may be granted by the McHenry County Board unless an application is filed for approval of such a site and is submitted for hearing and consideration by said County Board. An application for site approval need not be submitted if exempt by law or if the site is not a Pollution Control Facility as defined by the Illinois Environmental Protection Act.
- 101.2 The siting approval procedures, criteria and appeal procedures provided for in the Act for Pollution Control Facilities and as set forth in this Ordinance and the Articles of Rules and Procedures of the Pollution Control Facility Committee of McHenry County shall be the exclusive siting procedures, rules and appeal procedures to be applied in such matters. Local zoning or other local land use requirements shall not be applicable to such siting decisions.
- (A) Notwithstanding any other provision of this Ordinance, a transfer station used exclusively for landscape waste, where landscape waste is held no longer than twenty-four (24) hours from the time it was received, is not subject to the requirements of local siting approval under this Ordinance, but is subject only to local zoning approval.

ARTICLE TWO - DEFINITIONS

201 DEFINITIONS, GENERAL

- 201.1 In construction of this Ordinance, the rules and definitions contained in this Article shall be observed and applied. In further amplification and for clarity of interpretation of the context, the following definitions of words shall apply:
- (A) Words in the singular shall include the plural, those in the plural number shall include the singular;
- (B) Words in the present tense shall include the past and future tenses and words in the future tense shall include the present tense;
- (C) Words used in the masculine gender shall include the feminine and neuter genders;

- (D) The words “shall” or “must” are mandatory and not discretionary; the words “may” or “should” are permissive; and
- (E) Words and phrases defined herein shall be given the defined meaning. Words or phrases not defined, yet found in this Ordinance, shall have the same meaning as found in 415 ILCS 5/3 *et seq.*. Words and phrases not defined in either the Ordinance or 415 ILCS 5/3 *et seq.* shall be given their usual meaning except where the context clearly indicates a different or specified meaning.

202 LISTING OF DEFINITIONS

- 202.1 ACT is the Illinois Environmental Protection Act as amended (415 ILCS 5/1 *et seq.*).
- 202.2 AGENCY is the Illinois Environmental Protection Agency established by the Act.
- 202.3 APPLICANT is any person, firm or partnership, association, corporation, company or organization of any kind.
- 202.4 ARTICLES OF RULES AND PROCEDURES are those rules and procedures established by the County for the conducting of site location hearings for pollution control facilities as defined herein.
- 202.5 BOARD is the State of Illinois Pollution Control Board established by the Act.
- 202.6 COMMITTEE is the Pollution Control Facility Siting Committee of the McHenry County Board.
- 202.7 COUNTY is the unincorporated areas of McHenry County, Illinois.
- 202.8 COUNTY BOARD is the McHenry County Board.
- 202.9 HAZARDOUS WASTE DISPOSAL SITE is a site at which hazardous waste is disposed. Hazardous Waste is waste as defined in the Act.
- 202.10 POLLUTION CONTROL FACILITY is any facility so defined by Section 3.330 *et seq.* of the Illinois Environmental Protection Act.

ARTICLE THREE – DUTIES AND RESPONSIBILITIES

301 PROCEDURE FOR FILING AN APPLICATION FOR APPROVAL OF A POLLUTION CONTROL FACILITY

301.1 Pre-Application Notices

- (A) The applicant shall meet all notice requirements as required by 415 ILCS 5/39.2 *et seq.*, as amended from time to time, including, but not limited to the following:

1. No later than 14 days before the date on which the County Board receives a request for site approval, the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within two hundred fifty (250) feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located; provided that the number of all feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the two hundred fifty (250) feet requirement, provided further, that in no event shall this requirement exceed four hundred (400) feet including public streets, alleys and other public ways.
 - (a) Such notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted to the County Board, a description of the right of persons to comment on such request as hereafter provided and any other information as may be required by Section 39.2 et seq. of the Act, the Articles of Rules and Procedures for the McHenry County Pollution Control Facility Committee, and this Ordinance.
2. The applicant shall also serve, within fourteen (14) days prior to a request for location approval, such written notice upon members of the General Assembly from the legislative district in which the proposed facility is located and this notice shall be published in a newspaper of general circulation published in McHenry County. Such notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted to the County Board, a description of the right of persons to comment on such request as hereafter provided and any other information as may be required by the Committee Rules and Procedures.
 - (B) The applicant shall file proof of all notice requirements with the County Clerk as part of the record made in the siting process. Failure to include said proof will cause the application to be incomplete and not accepted by the County Clerk's office.

301.2

Application Filing

- (A) In order to request approval of a proposed Pollution Control Facility or expansion of an existing Pollution Control Facility in unincorporated McHenry County, an applicant must file one (1) original and thirty-six (36) copies of the application with the McHenry County Clerk, in the form

described in the Articles of Rules and Procedures. The applicant is encouraged to use paper containing post-consumer recycled products. Said Articles of Rules and Procedures may be obtained from the Office of the McHenry County Clerk.

- (B) The applicant must file with the McHenry County Clerk a filing fee of \$250,000 (Two Hundred Fifty Thousand and 00/100 Dollars) when applying for site approval of a Pollution Control Facility, except that a filing fee of \$400,000 (Four Hundred Thousand and 00/100 Dollars) is required if said facility is designed as a Hazardous Waste Treatment or Disposal Site. The costs and fees deposit, as applicable, is intended to defray the reasonable and necessary costs of processing the application, including, but not limited to: space rental, hearing officer(s), court reporter, transcription costs, public notice, staff review times, security, State's Attorney and County consultants (including tests, exhibits and testimony, if any, provided by said consultants), any other relevant costs incidental to the consideration of an application, and the costs of preparing the record for appeal, if any appeal of a County Board decision is made to the Board.

1. Should there be any additional costs incurred by the County in excess of the initial filing fee (including, but not limited to, fees and costs associated with appeal of any County decision on the application through and until a final, non-appealable order is entered on such matter), the applicant shall bear any and all additional costs. If the balance of the initial costs and fees deposit is reduced to a figure less than twenty thousand dollars (\$20,000.00). at any time prior to the conclusion of the application review, hearing, decision and appeal(s), if any, of the application, the applicant, upon notice from the County, shall contribute an additional twenty-five thousand dollars (\$25,000.00). The applicant shall pay, to the County, the amount requested by the County to supplement the initial costs and fees deposit within five (5) business days of receiving such notice.
2. In the event the applicant files an amendment in accordance with Section 39.2 (e) of the Act and the Articles and Procedures of the Pollution Control Facility Committee McHenry County, Illinois, an additional fee of fifty thousand dollars (\$50,000.00) shall be delivered to the Clerk at the same time as the filing of the amendment.
3. Any portion of the costs and fees deposit that remains unexpended at the conclusion of the local siting process (including all appeals and resolution of any applicant challenge to costs and fees), shall be returned to the applicant.

- (C) The application must be answered completely with information provided for each question, accompanied by all site plans, exhibits, maps and documents as specified in the Articles of Rules and Procedures. The determination of the quality and quantity of information to be included in an application is, ultimately, the applicant's to make, it being applicant's burden to demonstrate

that the siting criteria set forth in Section 39.2 of the Act and this Ordinance are met.

- (D) At any time prior to completion by the applicant of the presentation of the applicant's case in chief, the applicant may file not more than one amended application upon payment of those additional fees provided for herein pursuant to Section 39.2(k) of the Act and this Ordinance, and, in such event, the deadline for the County Board's decision shall be extended for an additional period of ninety (90) days.
- (E) An applicant may not file a request for local siting approval which is substantially the same as a request which was disapproved, pursuant to a finding against the applicant under any of criteria (i) through (ix) of Section 401.1 of this Ordinance and of Section 39.2(a) of the Act, within the preceding two (2) years.

301.3

The County Clerk, upon receiving an Application, shall do the following:

- (A) Accept for filing and date stamp as filed any application that is filed with the correct number of copies as required by Section 301.2 (A), in the form described in the Articles of Rules and Procedures, and accompanied by the application fees as provided in Section 301.2 (B). The date, as stamped by the County Clerk, shall be considered the official filing date for all time limit purposes. Receipt and acceptance of an application by the County Clerk is *pro forma*, and does not constitute an acknowledgement that the applicant has complied with all requirements of the Act or this Ordinance. Should the application be presented to the County Clerk without the correct number of copies, in the incorrect form or incomplete, or without the correct fee, the petition shall be rejected by the County Clerk.
- (B) Upon receipt of a completed application, and payment of the deposit fee, the County Clerk shall date stamp all the copies and immediately distribute the copies of the application to the following parties in the following numbers:
 - 1. Twenty-six (26) copies to the County Board;
 - 2. Three (3) copies to the McHenry County State's Attorney's Office;
 - 3. Two (2) copies to the McHenry County Department of Planning and Development;
 - 4. One (1) copy to the hearing officer;
 - 5. Two (2) copies to the nearest public library to where that facility is proposed; and
 - 6. The original application and two (2) copies shall be maintained by the County Clerk.
- (C) A copy of the application and all related documents or other materials on file with the County shall be made available for public inspection in the office of the County Clerk during normal business hours. Members of the public shall be allowed to obtain a copy of said request or any part thereof upon payment of actual cost of reproduction and proper request as outlined in the Freedom of Information Act (5 ILCS 140/1 *et seq.*)

301.4 Public Hearing Notice

- (A) The applicant is to cause to be published a notice of the public hearing in a newspaper of general circulation published in McHenry County not later than fourteen (14) days before said hearing.
- (B) Notice of such hearing shall be served in accord with the provisions of Section 39.2 of the Act.

302 POLLUTION CONTROL FACILITY COMMITTEE AND COMMITTEE
CHAIRMAN

- 302.1 Pollution Control Facility Committee (the Committee) shall be established by the County Board and shall consist of six (6) members. One (1) County Board member from each district is to be appointed by the Chairman of the County Board for a term of one (1) year.
- 302.2 The Chairman of the Pollution Control Facility Committee shall be appointed by the Chairman of the County Board and shall be the seventh (7th) member of the Committee. One member of the Committee shall be designated as Vice Chairman, who will serve as Acting Chairman in the event of the Chairman's absence. In the alternative, the Chairman of the County Board may elect if he/she chooses, to assume the chair of the Pollution Control Facility Committee. The Chairman shall serve for one year; no Chairman shall serve for more than two (2) consecutive terms.
- 302.3 The Committee shall establish Articles of Rules and Procedures for the application and hearing process governing Pollution Control Facilities. These rules and procedures must also be followed by any applicant. Any additional information or requirements mandated by said rules and procedures must be submitted or followed by said applicant.
- 302.4 All meetings and hearings of the Pollution Control Facility Committee shall be at the call of the Committee Chairman, or in his/her absence, the Acting Chairman, or by four (4) members of the Committee at such times as may be required and shall be held in accordance with the provisions of the Illinois Open Meetings Act (5 ILCS 120/1 *et seq.*) and Section 39.2 of the Act.
- (A) At least one public hearing shall be held by the Pollution Control Facility Committee no sooner than ninety (90) days but no later than one hundred twenty (120) days from the receipt of the request for site approval.
 - 1. The Chairman of the Committee shall notify the applicant in writing of the date of the public hearing before the Committee, at least thirty (30) days before that hearing, in order that the applicant may publish notice of that hearing.
- 302.5 The Committee shall select a hearing officer or officers to serve during any public hearing concerning an application for site approval.

302.6 The recommendation of the Committee on the application is to be in writing, specifying the reason(s) for the recommendation.

- (A) Once the Committee has made its recommendation and reduced its recommendation to writing, the written recommendation shall be submitted, as soon as practicable, to the full County Board for its decision as to the ultimate approval or disapproval of the proposed site location. Four (4) copies of the record of the public hearing shall also be made available to the full County Board in the County Board Office as soon as said transcript becomes available.

303 HEARING OFFICER(S)

303.1 The hearing officer(s) shall be appointed as outlined in 302.5.

303.2 The hearing officer(s) shall serve at the pleasure of the Committee.

303.3 Compensation for the services of the hearing officer(s) shall be mutually agreed upon before a hearing. The duties of the hearing officer(s) shall be provided for in the Articles of Rules and Procedures Pollution Control Facility Committee – McHenry County, Illinois (the “Articles of Rules and Procedures”).

303.4 A hearing officer or officers, shall preside at the public hearing and shall make any decisions concerning the admission of evidence and the manner in which the hearing is conducted subject to this Ordinance and the Articles of Rules and Procedures. However, the hearing officer(s) shall make all rulings and decisions in accordance with fundamental fairness. No ruling of the hearing officer(s) shall be appealable to the County Board.

304 COUNTY BOARD

304.1 Decisions

- (A) The County Board shall make its decision based upon the record as a whole and may consider the recommendation of the Committee. The decision of the County Board shall be in writing, specifying the reasons for the decision, such reasons to be in conformity with Section 39.2(a) of the Act (415 ILCS 5/39.2(a)).
- (B) Such decision shall be available for public inspection at the office of the County Clerk and may be copied upon payment of the actual cost of reproduction.
- (C) In granting approval for a site, the County Board may impose such conditions as may be reasonable and necessary to accomplish the purposes of the Act and that are not inconsistent with regulations promulgated by the Illinois Pollution Control Board.

- (D) If there is no final action by the County Board within one hundred eighty (180) days after the date on which it received the request for site approval, the applicant may deem the request approved.
- (E) Whether the County Board approves or disapproves of the proposed site, a Resolution shall be passed to that effect and reflecting such decision, stating the reason(s) for the decision.

304.2 Decision Review

- (A) In the event the petitioner for a review of the County Board's decision is a citizens' group that participated in the siting proceeding and is so located as to be affected by the proposed facility, such petitioner shall be exempt from paying the costs of preparing and certifying the record.

305 CONSULTANTS

- 305.1 In order to develop a record sufficient to form the basis of an appeal of the County Board decision, the McHenry County Department of Planning and Development and the State's Attorney's Office may retain consultants on behalf of the County. The consultants and the County agencies shall then commence a study of the application. The applicants shall cooperate fully with the consultants and the technical staff of the County in their review of the application.

ARTICLE FOUR – PUBLIC HEARING

401 HEARINGS ON APPLICATIONS

- 401.1 During the course of the public hearing before the Committee, the Committee shall receive testimony, such testimony to be recorded, from the applicant and witnesses the applicant may call, and County witnesses, and other witnesses or objectors, and shall recommend approval only if the proposed facility meets the following criteria:
- (i) the facility is necessary to accommodate the waste needs of the area it is intended to serve;
 - (ii) the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
 - (iii) the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;
 - (iv) the facility is located outside the boundary of the 100 year flood plain or the site is flood-proofed;
 - (v) the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents;

- (vi) the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;
- (vii) if the facility will be treating, storing or disposing hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release;
- (viii) the facility is consistent with any current solid waste management plan adopted by the County Board of the County which is consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act; and
- (ix) if the facility will be located within a regulated recharge area, any applicable requirements specified by the Illinois Pollution Control Board for such areas have been met.

401.2 The governing Authority as determined by subsection (c) of Section 39 of the Act may request the County Department of Transportation to perform traffic impact studies of proposed or potential locations for required pollution control facilities.

401.3 Members or representatives of the governing authority of a municipality contiguous to the proposed site may appear at and participate in public hearings held pursuant to this Ordinance.

401.4 The public hearing shall develop a record sufficient to form the basis of any appeal. The fact that a member of the County Board has publicly expressed an opinion on an issue related to site review proceeding shall not preclude the member from taking part in the proceeding and voting on the issue.

401.5 If, prior to making a final local decision, the County Board has negotiated and entered into a host agreement with the siting applicant, the terms and conditions of the host agreement, whether written or oral, shall be disclosed and made part of the hearing record for the local siting proceeding.

- (A) In the case of an oral agreement, the disclosure shall be made in the form of a written summary jointly prepared and submitted by the County Board and the siting applicant and shall describe the terms and conditions of the oral agreement.

402 PUBLIC COMMENT

402.1 Any person may file written comment with the County concerning the appropriateness of the proposed site for its intended purpose or its compliance with the requirements of Section 39.2 of the Act.

- (A) Said written comments shall be sent or delivered to the Office of the McHenry County Clerk, 2200 N. Seminary Avenue, Woodstock, IL 60098 within the time frames provided by Section 39.2 of the Act. Upon receipt of any written

comment, the Clerk shall date stamp the comment and shall file the written comment and the postmarked envelope in which the comment was received. These comments shall become a part of the record of the proceeding of the Committee.

- (B) Copies of such written comments shall be made available for public inspection in the offices of the Clerk, and members of the public shall be allowed to obtain a copy of any written comment upon payment of actual cost of reproduction.
- (C) Any written comment received by the Clerk or postmarked not later than thirty (30) calendar days after the date of the last public hearing shall be made part of the record and the County Board shall consider any such timely written comments in making its final determination concerning said application. In the event that the thirtieth day falls on a Sunday or a Federal Holiday, the next day on which mail is delivered shall be considered the thirtieth day for the purpose of this subsection.

403

PUBLIC RECORD

403.1 The County Clerk or his/her designee, shall prepare and maintain the public record concerning the application, and such record shall include the following documents:

- (A) The original application and amendments filed with the Clerk;
- (B) All written comments filed with the Clerk within the time frame specified by Section 402 of this Ordinance;
- (C) Notices of Participants filed with the Clerk pursuant to the Articles of Rules and Procedures;
- (D) All exhibits entered into evidence at the time of the public hearings;
- (E) All transcripts of testimony during the public hearing;
- (F) Any motions filed during the course of the public hearing;
- (G) Copies of all published or displayed notices of the public hearings which were prepared by the County or prepared by others and filed with the Clerk;
- (H) All reports/invoices submitted to the Clerk by the County's finance department, reacted as necessary to prevent disclosure of confidential or privileged information;
- (I) All transcripts, when available, of meetings, other than the public hearings held pursuant to this Ordinance, at which a County Board Member was in attendance. Although County Board members are not encouraged to attend meetings at which the member knows the application may be discussed, due

to the member's continuing, regular legislative duties during the course of the County Board's consideration of an application, attendance at such meetings is sometimes unavoidable (e.g. attendance at a municipality's council or a local chamber of commerce meeting). As such, the member is required to obtain and file a transcript of any meeting, where such meeting has been transcribed or recorded, or otherwise disclose such meeting in the public records (such as disclosing it on the record during the transcribed public hearings or during the written comment period provided for in this Ordinance);

- (J) The Hearing Officer's and County staff's written findings and recommendations to the Committee and County Board;
- (K) The written recommendation of the Committee to the County Board; and
- (L) The Resolution containing the final decision of the County Board on the application.

403.2 The Clerk or his/her designee shall, during the regular business hours of the Clerk's office, make the public record available to any person requesting to review it.

403.3 The Clerk or his/her designee shall, during the regular business hours of the Clerk's office, accept requests from persons for copies of the public record, in whole or in part, and arrange for copying so requested upon the requesting person's payment of the actual cost of copying. The Clerk shall respond to copying requests within a reasonable time.

403.4 Although late filed public comments are not part of the public record pursuant to this Ordinance, they shall be retained by the Clerk with any evidence of the date of filing, such as the Clerk's date stamped copy of the written comment if submitted in person, or the postmark if the written comment was mailed.

ARTICLE FIVE – APPROVED SITING

501 TIME LIMITATIONS

501.1 A local siting approval granted in accordance with this Ordinance shall expire at the end of two (2) calendar years from the date upon which it was granted, unless the local siting approval granted under this Ordinance is for a sanitary landfill operation, in which case the approval shall expire at the end of three (3) calendar years from the date upon which it was granted, and unless within that period the applicant has made application to the Agency for a permit to develop the site.

- (A) In the event that the local siting decision has been appealed, such expiration period shall be deemed to begin on the date which the appeal process is concluded.

501.2 Except as otherwise provided in Section 501.1 of this Ordinance, upon the expiration of a development permit under Section 39 (k) of the Act, any local siting approval granted for the facility under this Ordinance shall also expire.

502 TRANSFERS

502.1 Siting approval obtained pursuant to this Ordinance is transferable and may be transferred to a subsequent owner or operator. In the event that siting approval has been transferred to a subsequent owner or operator, that subsequent owner or operator assumes and takes subject to any and all conditions imposed upon the prior owner or operator by the County Board pursuant to Section 304.1 (C) of this Ordinance. However, any such conditions imposed pursuant to this Section may be modified by agreement between the subsequent owner or operator and the County Board. Further, in the event that siting approval obtained pursuant to this Ordinance has been transferred to a subsequent owner or operator, that subsequent owner or operator assumes all rights and obligations and takes the facility subject to any and all terms and conditions of any existing host agreement between the prior owner or operator and the County Board.

ARTICLE SIX – SEVERABILITY CLAUSE

601 SEVERABILITY CLAUSE

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

ARTICLE SEVEN – ORDINANCE REPEALED

701 ORDINANCE REPEALED

All ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed.

NOW, THEREFORE, BE IT FURTHER ORDAINED that this amended Ordinance shall become effective November 16, 2004
(Date of passage)



MICHAEL W. TRYON
Chairman, McHenry County Board

DON LARSON, Vice Chairman

ATTEST:



KATHERINE SCHULTZ,
County Clerk

STATE OF ILLINOIS)
 SS
COUNTY OF MCHENRY)

I, Katherine C. Schultz, County Clerk within and for said County and State aforesaid, do hereby certify the foregoing to be a true and complete copy of Ordinance No. O-200411-12-134; Pollution Control Facility Siting Ordinance. WHEREOF I have hereunto subscribed my hand and affixed the official seal of said County, at my office in Woodstock, Illinois this 10 day of February AD, 2009.

Katherine C Schultz
McHenry County Clerk